



NCWORKS COMMISSION

NCWorks Commission Policy Statement Number: CPS 08-2021

Date: May 13, 2021

Subject: Customer Complaint, Appeal, and Resolution Policy

From:

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Chair, NCWorks Commission

Purpose:

The Workforce Innovation and Opportunity Act (WIOA) mandates that each State and Local Area Workforce Development Board (WDB) establish and maintain procedures for WIOA-related complaints. As required under Title 20 CFR Section 683.600(d), State procedures must provide a process for resolving appeals of decisions issued at the local level, a process for dealing with complaints from participants and other interested parties affected by statewide workforce programs, a process for remanding (or returning) complaints related to the Local Area WDB to the local area grievance process, an opportunity for an internal resolution and a hearing to be completed within 60 days of the filing of the complaint, and an opportunity for appeal to the Secretary under certain circumstances.

References:

WIOA (Public Law 113-128) Section 181(c)
20 CFR § 658.411
20 CFR § 683.600
20 CFR § 683.610
20 CFR § 620
WIOA (Public Law 113-128) Sections 301-308

Background:

United States Department of Labor (USDOL) has mandated that the Division of Workforce Solutions (DWS) develop a statewide complaint and inquiry intake system, as well as an appeals process for jobseekers who have been banished or suspended, employers who have been denied access to www.ncworks.gov, as well as Migrant and Seasonal Farm Workers (MSFW) and employers affiliated with the MSFW program. Any questions, complaints, or appeal inquiries made by MSFW should be routed to the DWS Monitor Advocate at DWS_StateMonitorAdvocate@nccommerce.com per Commission Policy Statement MSFW Complaint System and Appeal Policy Procedure.

This Policy sets forth the procedures to be followed regarding complaints and grievances that may occur during the administration of any WIOA funded and related activities. These procedures outline the receipt and the review of any resolution of such complaints and grievances. This Policy was developed to provide written procedures regarding the filing and the resolution of complaints filed for any of the aforementioned reasons that are levied against a NCWorks Career Center, DWS, or its sub grantees.

Under WIOA, customer complaints are viewed as opportunities to improve services. The primary goal of this complaint process is to address specific customer concerns, resolve the issues in the most expedient manner, learn from the complaint and implement resolutions throughout the entire Workforce system.

All complaints filed, regardless of the type, must utilize the complaint system as described in this Policy Statement. This Policy governs customers (employers or jobseekers), DWS staff, Local Area WDB staff, partner agency staff, NCWorks Career Center staff, and contractor staff that provide services directly, and those that receive services through the NCWorks Career Centers.

Complaints may occur for many reasons and will arise from anyone being served by the Workforce system. Complaints may be resolved through an Informal Resolution (IR) or hearing process. Complaints generally fall into five (5) categories:

- Program complaints involving services offered within NCWorks Career Centers by Career Center staff. These services include: WIOA, Trade Adjustment Assistant (TAA), MSFW, Re-Entry/Justice Involved Programs, Veteran's Programs, Business Services, or Career Services,
- Jobseekers that are banished or suspended from NCWorks Career Centers,
- Employers that have been denied access to www.ncworks.gov,
- Fraud, abuse, or other criminal activity, and
- Discrimination

This Policy does not address the procedures for processing complaints alleging discrimination under WIOA Section 188 Nondiscrimination and Equal Opportunity Regulations, 29 CFR Part 38. All Discrimination Complaints received by DWS will be referred to either the programmatic Equal Employment Opportunity (EEO) Officer or to a designated EEO Officer/Diversity Coordinator for investigation and resolution. Such complaints must be handled according to the procedures described in the WIOA Nondiscrimination/Equal Opportunity Standards and Complaint Procedure Policy, which can be found on the NC Commerce website.

Also, this Policy does not address procedures applying to the appeals of imposition of sanctions for substantial violations or performance failures of subrecipient of Federal grant awards and state grants. Such procedures can be found in the Local Area Workforce Board Sanctions and Appeals Policy, which can be found on the NC Commerce website.

Useful Terms

Complainant – the party that files the complaint or grievance.

Hearing Officer – an official who conducts an investigation or administrative hearing as a disinterested, neutral party.

Informal Resolution (IR) – an opportunity to resolve complaints and grievances informally.

Local Area – the Local Area administrative entity and its subrecipients to whom the administrative entity has delegated the grievance and complaint resolution process.

Ombudsman – DWS official who investigates complaints lodged by customers of NCWorks Career Centers and attempts to resolve the conflicts or concerns raised, either by IR or by making recommendations according to established policy.

Participant – an individual who has been determined to be eligible to participate in and who is receiving services under a program authorized under WIOA.

ROD – a DWS Regional Operations Director.

Service Provider – a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training, employment, or supportive services to WIOA participants.

State – The State includes the Governor, the NCWorks Commission, and the DWS.

Local Area Workforce Development Boards (WDB) - Local entity tasked with the planning and oversight responsibilities for workforce programs and related services in their area.

Action:

I. Complaint Procedures

This section lays out different procedures for the following types of complaints and concerns:

- A. Local-Level Complaint Requirements and Procedures
- B. Employers' Questions Regarding Account Access Status in www.ncworks.gov
- C. State-Level Complaint Requirements and Procedures
- D. Complaints Involving Fraud, Waste, or Abuse

A. Local-Level Complaint Requirements and Procedures

Local Area WDBs must create a grievance and complaint policy explaining local-level procedures. According to 20 CFR § 683.600(c), this policy must provide:

- A process for dealing with complaints, to include an opportunity for participants and other interested parties to allege unjust denial of WIOA services in a WIOA-funded program that do not allege discrimination or denial of equal opportunity,
- An opportunity for IR and a hearing to be completed within sixty (60) calendar days of filing the complaint:
 - An opportunity for a local level or appeal to the State when: No decision has been made within sixty (60) calendar days; or
 - Either party is dissatisfied with the local decisions,
- All complaints must be filed within thirty (30) days of the alleged violation, in order to be considered by the Local Area WDB.

B. Employers' Questions Regarding Account Access Status in www.ncworks.gov

- Employers with questions or concerns with the status of their employer account status should first contact the local NCWorks Career Center Manager. Criteria for granting employer access to www.ncworks.gov is determined by the DWS Job Order Operational Guidance.
- If there is an impasse at the local level and employers are not satisfied with their account status in www.ncworks.gov, the employer may file an appeal in writing with the DWS Ombudsman within five (5) calendar days of notification by the local NCWorks Career Center Manager of the final local decision.
- The DWS Ombudsman will assign the appeal case to the DWS ROD in the stated region for appeal review.

- The DWS Ombudsman will notify the employer of the ROD's decision within fifteen (15) calendar days of the final agency decision. The ROD's decision will be the final agency decision regarding the matter.

C. State-Level Complaint Requirements and Procedures

- Complaints by individuals or interested parties affected by statewide workforce programs shall be filed with the DWS Ombudsman at 919-814-0302 or DWSML_CustomerOmbudsman@nccommerce.com.

NC Division of Workforce Solutions
 Attn: DWS Ombudsman
 4316 Mail Service Center
 Raleigh NC 27699-4316

- All complaints or inquiries received through agencies within the North Carolina Department of Commerce, NCWorks Career Centers, Legislators, the Governor's Office, or sent to DWS will be assigned to the Ombudsman for review.
- The complaint must be in writing, dated, and signed by the complainant.
- The State will attempt to obtain the following information for all complaints:
 - Full name, telephone number, and mailing address of the complainant.
 - A clear and concise statement of the facts and dates describing the alleged violation.
 - The provision(s) of WIOA, Federal regulations, State laws or regulations, grant, or other agreements under WIOA believed to have been violated.
 - Complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with WIOA law, regulation, or contract.
 - The remedy sought by the complainant.
 - The DWS Ombudsman or their designee shall review the complaint and notify the complainant and respondent of the opportunity for an IR within fifteen (15) days of receipt.
- Complainants are encouraged to include the above information in their complaint. However, the absence of any of the requested information will not be used as a basis for dismissing the written complaint.

- The official filing date of the complaint is the date it is received by the DWS Ombudsman. The DWS Ombudsman shall issue a written decision within sixty (60) days of the official filing date.
- Jobseekers that are banished or suspended from an NCWorks Career Center or employers that are denied access to www.ncworks.gov may also submit a request for IR or hearing. All requests for a hearing and associated documents can be accessed by contacting the DWS Ombudsman at 919-814-0302 or DWSML_CustomerOmbudsman@nccommerce.com.
- Once a complaint is reported to the DWS Ombudsman, programmatic inquiries are sent to the responsible parties for assistance. The responsible parties include Local Area WDB Directors and staff, NCWorks Career Center staff, Veterans Services, MSFW Monitor Advocate, Trade Coordinator, Reentry Coordinator, DWS Central Office Staff, DWS ROD, Complaint / EEO staff, Partner Agencies and Legislative Liaison staff who have the specific content knowledge to assist the claimant or inquiring citizens. The Ombudsman assigns a Case Identification (CID) number. Local Area WDB, NCWorks Career Center, and specific program information are added to the inquiry or complaint. General inquiries of how to access services are currently not assigned a CID.
- In order to monitor denial of WIOA service complaints, the State will use the following steps:
 1. The DWS Ombudsman will conduct a State review to determine whether the local area hearing was conducted in accordance with the local hearing level procedures.
 2. The DWS Ombudsman will send complaints regarding denial of WIOA Services back to the Local Area (20 CFR § 683.600(d)(3)) when there is insufficient documentation that an opportunity for an informal hearing was offered. Complaints returned to the local level will receive continued follow-up to ensure either resolution or proper escalation.
 3. If the complaint has exceeded the sixty (60) calendar day resolution period, or if either party is dissatisfied with the local-level decision and wishes to file an appeal, the DWS Ombudsman may request documentation to demonstrate how the complaint has been handled on the local level. The DWS Ombudsman will compare the provided documentation to the local grievance and complaint policy to determine whether the process was carried out according to local regulations.

4. Complainants who desire to appeal an adverse decision from the Local Area WDB or who did not receive a decision from the Local Area WDB at all within sixty (60) days must file their complaint or appeal within ten (10) days from the date the decision is received or, if no decision, the date the decision was due from the Local Area WDB. Upon receiving a local complaint that has been appealed to the State level, the DWS Ombudsman, on behalf of the State, will review the case and issue a final decision within thirty (30) calendar days after the complaint was filed with the State.

- **NOTE:** A customer does not lose his or her right to request redress through the complaint/hearing process when a determination of suspension or banishment has been made. All written notifications of sanction and banishment should apprise the individual of his or her rights to file an appeal. However, a customer's request to seek redress through the complaint system is not cause to suspend or delay the sanction or banishment terms until redress through the complaint process (including all levels of appeal) have been exhausted.
- Resolution and appeals of State-level complaints are addressed in Sections II and III of this policy. As laid out in those Sections, jobseekers that are banished or suspended from an NCWorks Career Center or employers that are denied access to www.ncworks.gov may also submit a request for IR or hearing. All requests for a hearing and associated documents can be accessed by contacting the DWS Ombudsman at 919-814-0302 or DWSML_CustomerOmbudsman@nccommerce.com.

D. Complaints Involving Fraud, Waste or Abuse

It is the role of any Local Area WDB staff member or DWS employee to notify the DWS Ombudsman immediately of any potential case of fraud, waste, or abuse. The DWS Ombudsman will serve as primary contact with USDOL and law enforcement.

- The DWS Ombudsman prepares an Incident report and an Executive Summary of all complaints involving fraud, waste or abuse.
- The Ombudsman notifies the DWS Assistant Secretary along with the appropriate law enforcement authorities (USDOL Employment and Training Administration, State Bureau of Investigation, State Auditor, NC Department of Labor and Law Enforcement Officials).

- Local Area WDB staff, DWS and Career Center staff shall not interfere in or obstruct any part of a criminal investigation.
- The DWS Ombudsman will serve as primary contact for law enforcement officials. The appropriate law enforcement authority will lead the investigation and report back to the DWS Ombudsman of any findings.

As noted in 20 CFR 667.630, complaints involving criminal fraud, waste, abuse or other criminal activity should be reported immediately to USDOL through the Department's Incident Reporting System to the U.S. Department of Labor Office of Inspector General, Office of Investigations, 200 Constitution Avenue NW, Room S-5514, Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1-800-347-3756.

II. Resolution of State-level Complaints

A. Step 1 – Information Resolution (IR)

This is generally the most expedient way to obtain a remedy. An attempt will be made to informally resolve the complaint first to the satisfaction of all parties. Most complaints are resolved with IR.

- IR can include, inquiry determination of eligibility or ineligibility for services.
- IR can also include services offered and accepted.
- IR is the adoption of a multiple partner service plan.
- The partner agency, Local Area WDB, NCWorks Center, and program staff agree on specific service plans and strategies and work toward common goals.
- All staff, partners, and contractors are required to follow IR processes to attempt to resolve the complaint and report the determination back to the DWS Ombudsman within five (5) business days. All parties must be given written notification if calendar timeline thresholds cannot be met. This notification must also include newly established deadlines.
- Once a determination has been made the Ombudsman will reach out to the customer with that determination and determine whether the issue will be referred to the appropriate law enforcement agency.

B. Step 2 – State Complaint Hearing

When no IR is possible, a determination letter will be issued by the DWS Ombudsman. Any party dissatisfied with determination may appeal in writing fifteen (15) days from the date of determination and request a hearing. The request for a hearing must be filed with:

NC Division of Workforce Solutions
Attn: DWS Ombudsman
4316 Mail Service Center
Raleigh NC 27699-4316

The complainant impacted Local Area WBD Director, DWS ROD, and any other interested parties shall be notified in writing of the hearing at least fifteen (15) days prior to the hearing. The notice will include the date and time of hearing, which must be conducted forty-five (45) calendar days from the date the complaint/grievance was filed. The hearing shall be conducted by an impartial Hearing Officer.

- The hearing shall be conducted telephonically in an informal manner without the application of strict rules of evidence.
- The Hearing Officer may be recruited from NCWorks Career Center staff or Statewide DWS staff.
- The Hearing Officer shall set time thresholds for any hearing testimony.
- No Career Center staff or DWS staff from the impacted Local Area may serve as Hearing Officer in the matter.

A determination by the Hearing Officer shall be deemed final unless a complainant submits a written appeal to the DWS within thirty (30) calendar days of the issuance of the decision in accordance with the below requirements.

III. Complainant Appeals Process and Procedures

- A. A complainant may file an appeal with the Assistant Secretary, Division of Workforce Solutions, if
1. A hearing has been conducted and either party is dissatisfied or has been adversely affected by the Hearing Officer's decision.
 2. If a hearing was not conducted within sixty (60) calendar days from receipt of the grievance; or
 3. If a hearing was conducted, but a decision was not issued within the mandated sixty (60) calendar day time period.
- B. The appeal should be concise (if possible, not to exceed five (5) pages which does not include exhibits and attachments) and shall be sent by certified mail, return receipt to:

NC Division of Workforce Solutions
Attn: Assistant Secretary for Workforce Solutions
DWS Appeal Notice
4316 Mail Service Center
Raleigh NC 27699-4316

- C. To the extent possible, the appeal request shall state the facts, laws, procedures, et cetera that the complainant believes to be relevant for review. The appeal must be filed with DWS within thirty (30) calendar days of receipt of the DWS Hearing Officer's determination. The request shall include the complainant's address where official notices will be mailed.
- D. The State can remand the appeal back to the State Ombudsman to hold a hearing or impose other remedies to resolve the complaint.

The appeal actions listed above supplement, but do not supplant, applicable civil and criminal actions under other pertinent Federal, State, or local laws, regulations, policies, or terms and conditions of applicable awards, contracts, et cetera.

IV. Local Area WDB Appeals Process and Procedures

- A. A Local Area WDB may file an appeal with the Chief Deputy Secretary, State Department of Commerce, if
 1. The Assistant Secretary, Division of Workforce Solutions, has made a decision on the complainant's appeal and the Local Area WDB is dissatisfied or has been adversely affected by the Assistant Secretary's decision; or
 2. An appeal was made to the Assistant Secretary, but a decision by the Assistant Secretary was not issued within a sixty (60) calendar day reasonable time period or without an extension notification past the sixty (60) day threshold. All parties must have been given prior written notification if calendar timeline thresholds were not met. This notification should have included newly established deadlines.
- B. The appeal should be concise (if possible, not to exceed five (5) pages which does not include exhibits and attachments) and shall be sent by certified mail, return receipt to:

NC Department of Commerce
Attn: Chief Deputy Secretary
DWS Appeal Notice
301 N. Wilmington Street
Raleigh, NC 27601

- C. To the extent possible, the appeal request shall state the facts, laws, procedures, et cetera that the Local Area WDB believes to be relevant for review. The appeal must be filed with the Department of Commerce within thirty (30) calendar days of receipt of the DWS Assistant Secretary's determination. The request shall include the Local Area WDB's address where official notices will be mailed.
- D. The State can remand the appeal back to the State Ombudsman to hold a hearing or impose other remedies to resolve the complaint.

The appeal actions listed above supplement, but do not supplant, applicable civil and criminal actions under other pertinent Federal, State, or local laws, regulations, policies, or terms and conditions of applicable awards, contracts, et cetera.

V. Federal-Level Complaint Procedures

Under 20 CFR § 683.630, if the State has not issued a decision within the required 60-day time limit, the complainant can file and appeal to the Secretary of Labor. An appeal must be made within one hundred twenty (120) days of the filing of the complaint with the State or filing of the appeal of the local grievance or complaint with the State. An appeal can also be made after a decision on a grievance or complaint under 20 CFR § 683.600(d) has been reached and the party wishes to appeal to the Secretary. The appeal must be filed within sixty (60) days of receipt of the decision.

All appeals must be sent by certified mail, return receipt requested, to the following address: Secretary of Labor, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Assistant Secretary for Employment and Training (ASET). The Secretary shall issue a final determination no later than 120 days after receiving the appeal.

Nothing in this policy statement precludes a complainant from pursuing a remedy authorized under another Federal, State, or local law (20 CFR §683.600(h)).

Effective Date: May 12, 2021

Expiration: Indefinite

Contact: DWS Ombudsman

Attachments:

- A. Individual Appeal to NCWorks Career Center Banishment or Suspension Form
- B. Employer Appeal to NCWorks Online Denial/Revocation Form
- C. NCWorks Customer Complaint Form